

Remarks:

Applicants have read and considered the Office Action dated August 14, 2009 and the references cited therein. Claims 1-3, 7-8, 10, 12 and 14-18 have been amended. New claims 26 and 27 have been added. Claims 1-27 are currently pending. Reconsideration is hereby requested.

The Disclosure was objected to for a reference to claim 1. The objected to language has been cancelled from the specification. Applicants assert that the objection to the Disclosure has been overcome and should be withdrawn.

Claims 17-25 were rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. The Action stated that dependent claims 17-25 are set forth as apparatus claims but depend from process claim 1. Claim 17 has been rewritten as an independent apparatus claim. Applicants assert that the rejection under 35 U.S.C. § 101 has been overcome and requests that the rejection be withdrawn.

Claims 1-3, 7, 10, 12 and 14-17 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Action states that "fringe systems" are recited but there is no antecedent basis and "fringe systems" are not defined in the disclosure. Claim 2 has been amended to recite "interference fringes" rather than "interference fringe systems." Applicants assert that the indefiniteness rejection has been overcome and requests that the rejection be withdrawn. Similarly, claim 3 has been amended in a manner similar to claim 2. Applicants assert that the rejection to claim 3 has been overcome for the same reasons.

In addition, claim 3 was rejected for use of the term "depth." The term "depth" has been cancelled from the claim and claim 3 now recites "determination of intensity modulation."

Applicants assert that the terminology is sufficiently defined and the indefiniteness rejection should be withdrawn.

Claim 7 was rejected for reciting "close to the position of the position of the smallest diameter" that cannot be determined from the claim as set forth. The language in question has been cancelled from the claim. Applicants assert that claim 7 overcomes the indefiniteness rejection.

Claim 12 was stated to be indefinite. The claim has been amended to recite the second recitation of a determination and is believed to overcome the indefiniteness rejection.

Claims 1-3, 10 and 14-17 contain the term "system" as either "fringe systems" or "systems of fringes." The term "system" has been deleted from the claims. Applicants assert that the indefiniteness rejections have been overcome and should be withdrawn.

Claims 1-7, 9, 10, 14, 15, 17, 18, 20, 21, 23 and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by Koshizuka. Applicants respectfully traverse the rejection. Claim 1 has been amended and now recites that the method determines the size of the particles. In addition, claim 1 now recites that a plurality of fringes are used in the method. Applicants assert that Koshizuka does not disclose or suggest a method that determines the size of particles. Koshizuka only discloses a system that detects existence of a number of particles. There is no teaching or suggestion that Koshizuka teaches or suggests determining the size of the particles as now recited in claim 1. Moreover, claim 17 has also been amended to recite an apparatus that is used to determine the size of particles. Applicants further assert that claim 17 also patentably distinguishes over Koshizuka for at least the same reasons. Applicants assert that claims 1 and 17 as well as the claims depending therefrom patentably distinguish over Koshizuka or any other prior art or combination thereof. Applicants therefore request that the rejection under 35 U.S.C. § 102(b) be withdrawn.

Claims 1, 11-13 and 16 were rejected under 35 U.S.C. § 102(b) as being anticipated by Koshizuka. Applicants assert that the claims are allowable for the same reasons discussed above with regard to the first rejection under 35 U.S.C. § 102(b) as being anticipated by Koshizuka.

Claims 8, 19, 22 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Koshizuka. As discussed above, the claims have been amended and are believed to patentably distinguish over Koshizuka. Applicants assert that claims 1 and 17 are new and novel as well as being non-obvious over Koshizuka. Therefore, Applicants assert that claims 1 and 17 are not obvious in view of Koshizuka. Moreover, Applicants assert that dependent claims 18, 19, 22 and 25 are also non-obvious for at least the same reasons as well as others. Applicants request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Finally, Applicants assert that new claims 26 and 27 further recite determining the material of the particle and shape of the interference fringes to determine the shape of the particle. Applicants assert that Koshizuka does not teach or suggest determining the size as discussed above and further does not teach or suggest also determining the shape of the particle. Applicants therefore assert that claims 26 and 27 patentably distinguish over Koshizuka and are in condition for allowance.

A speedy and favorable action in the form of a Notice of Allowance is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicant's representative at (612) 336-4728.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.



Respectfully submitted,

MERCHANT & GOULD P.C.

Dated: _____

2/16/10

By: _____

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GAS/km